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File No. O. Harijans/52

Legal Deptt.

A **BRANCH**

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Subject:— Opinions under the Bombay Harijan (Removal of Social Disabilities) Act 1947

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C O N T E N T S.

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Article 17 of the Constitution of India refers to abolition of untouchability. Under that article untouchability is abolished and its practice in any form is forbidden. Under that article the enforcement of any disability arising out of untouchability is also an offence punishable in accordance with law. Sub-clause (ii) in clause (a) of article 35 empowers Parliament to make laws for prescribing punishment for those acts which are declared to be offences under Part III. Article 17 is in Part III and therefore Parliament can make a law for punishing persons for offences under that article. Clause (b) of article 35, however, saves the laws in force immediately before the commencement of the Constitution providing for punishment of any act referred to in sub-clause (ii) of clause (a) of article 35. The law in force in this respect is the Bombay Harijan Removal of Social Disabilities) Act, 1946. Section 3 of that Act confers certain rights on Harijans and section 7 thereof punishes persons for certain acts. The relevant clauses in section 3 to which reference has been made by the Director of Backward Class Welfare in his letter of 28th Fenruary 1952, are sub-clauses (vi) and (vii) in clause (b) of section 3. Under those clauses no Harijan shall, merely on the ground that he is a Harijan be prevented from -

(vi) having access to or using any place set apart or maintained for the use of Hindus generally but not for the use of any particular section or class thereof;

(vii) enjoying any bnefit under a charitable trust created for the benefit of Hindus generally, but not for the benefit of any particular section or class thereof.

Section 7 of the Act, which is a penalty section provides

that whoever prevents any person by reason of his being a Harijan from having any access to or using any place referred to in sub-clause (vi) of clause (b) of section 3 or from enjoying any benefit under a charitable trust referred to in sub-section (viii) of clause (b) of the said section 3, or abets prevention thereof shall on conviction be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundreds rupees or with both. This section also punishes a person for contravening the provisions of section 4 ofr betting the prevvention thereof. Section 4 prohibits any person in charge of a place referred to in sub-clause (vi) of clause (b) of section 3 from imposing any restriction on Harijan or acting in a manner as to result in discrimination against him merely on the ground that he is a Harijan.

2. Before any person can be prosecuted under section 7, it will be necessary for the prosecution to prove that the place in respect of which the offence was committed was set apart or maintained for the use of Hindus generally but not for the use of any particular section or class thereof. The question this depends upon the facts of each case, andunless they are known no definite opinion can be expressed whether any particular case falls within the mischief of the Act. (cf.R.L.A.'s Opinion No. 165 Confl. dated the 16th April 1948). Similarly, in the case of Dharmashalas to which a reference has been made by the Director of Backward Class Welfare, it would be necessary to scrutinize the trusts to ascertain whether they are created for the benefit of Hindus generally or for any sec. or class of Hindus, and then express an opinion in respect of each such trust. Unless that is done it would not be possible to say whether a trust is meant for the benefit of Hindus generally or for any section or class of Hindus. No useful purpose will be served by expressing opinion on the hypothetical questions raised in those papers.

Sd. P.M.Lad.
23/5

o.c.

Remembrancer of Legal Affairs.

U.R. to E.D. No.8719, dated the 24th May 1952.

VGP. 15-6-56